



## *Everett City Attorney's Office*

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### MEMORANDUM

**TO:** City Council; Cassie Franklin; Lyle Ryan; Nick Harper; Sharon Fuller; Gregory Moore; Erika Frost  
**FROM:** Flora Diaz, Assistant City Attorney  
**DATE:** November 27, 2018  
**SUBJECT:** Reusable Bag Ordinance (12/5 Agenda 3<sup>rd</sup> Reading; Council Bill# CB1810-46)

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#### **Council Input Received:**

The Reusable Bag Ordinance was reviewed at the November 14, 2018 General Government Subcommittee meeting. Councilmember Tuohy, Councilmember Bader, and Council President Roberts were present along with Gregory Moore and Erika Frost from Public Works. Public Works presented a detailed public outreach and education plan, and received Council feedback.

If the attached edits are acceptable, they can be adopted by reference by making a motion to amend the original ordinance and adopt these changes from the dais. Regarding the draft of the Ordinance, an overview of decisions were as follows:

- 1) To allow nine months between passage of the Ordinance and its effective date, which will permit Public Works to execute their public information and outreach plan prior to next year's busy holiday season.
- 2) To remove the compostable bag/bag color requirements of Ordinance, with direction to Public Works to instead pursue education and outreach to businesses on this issue.
- 3) To keep the pass-through charge at \$0.05 and not increase it to \$0.10.
- 4) To keep the pass-through charge of \$0.05 on both recyclable paper carryout bags and on reusable plastic carryout bags.
- 5) To simplify the definition of recyclable paper carryout bag, including specifying a size requirement.
- 6) To keep the exemption period at one-year at a time maximum.
- 7) To keep the requirement that take-out food carryout bags comply with the Ordinance.

The edits to the Reusable Bag Ordinance based on Council and Public Works feedback are attached to this memo, using "track changes" to show where the proposed changes are. Please contact me if you have questions.

ORDINANCE No. \_\_\_\_\_

AN ORDINANCE Relating to Reusable Bags, Adding a New Chapter Entitled Reusable Bags to Title 8 EMC (Health and Safety)

WHEREAS, ~~citizens-residents~~ have requested the City Council enact an Ordinance relating to disposable plastic waste, including plastic bags, out of concerns for the environment; and

WHEREAS, the City Council desires to conserve resources, reduce greenhouse gas emissions, waste, litter, and marine pollution, ~~protect wildlife~~, and to protect the public health and welfare, ~~including wildlife~~, all of which increase the quality of life for the City's residents; and

WHEREAS, the State Legislature, in RCW 70.95.010(4), established waste reduction as a fundamental strategy of solid waste management, including changing purchasing practices to reduce the amount of waste that becomes a governmental responsibility; and

WHEREAS, the State Legislature, in RCW 70.95.010(6)(c), found that it is the responsibility of ~~county and~~ city governments "to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies;" and

WHEREAS, less reliance on single-use carryout bags contributes toward ~~achieving~~ the goals of conserving energy and natural resources while reducing greenhouse gases and litter; and

WHEREAS, ~~single-use plastic carryout bags are made of nonrenewable resources and never biodegrade; they photo-degrade and can take hundreds of take many years to break down into tiny toxic bits decompose and eventually break down into microscopic granules, which can seep into the soil, waterways, lakes, and bays, posing can persist in the environment and may pose a threat to animal life and the natural food chain; and~~

WHEREAS, the Ocean Conservancy cited plastic bags as within the most collected items in the ocean trash index for Washington State per the Building a Clean Swell 2018 Report; and

WHEREAS, ~~the Washington State Department of Ecology's 2010 "Beyond the Curb" study of commingled residential recyclables from the Southwest Region estimates that it takes \$700-\$1,000 per ton for recycling centers to remove plastic films from other recyclables single-use plastic carryout bags cause significant problems for recycling processors and are costly to deal with and dispose of; and~~



~~WHEREAS, the City finds that composting is threatened because of contamination by confusingly colored, marked and look-alike materials, including some non-compostable plastic film bags; and~~

~~WHEREAS, single-use plastic carryout bags can contaminate the compost stream and it is in the City's interest that contamination in local compost be to reduced this contamination to help ensure local compost is marketable and viable for public and private use in local gardens, farms, landscaping, and surface water and transportation projects; and~~

WHEREAS, in order to reduce the use of single-use plastic and paper carryout bags in the City, it is necessary to regulate such use; and

WHEREAS, the City Council solicited feedback and comments from residents and businesses, and considered various studies, reports, articles, and other references, including, but not limited to: Seattle Bag Ban Update Memorandum, City of Seattle (2016); Discussion of Plastic Carryout Bag Regulation Alternatives, City of Shoreline (2013); Plastic Bag Staff Report, City of Kirkland (2013); Reducing Our Use: Plastic Shopping Bags, Thurston County (2012); Assessment of the Potential for Cross Contamination of Food Products by Reusable Shopping Bags, D. Williams, C. Gerba, S. Maxwell, R. Sinclair, Food Protection Trends V.31, No. 8 508-513 (2011); The Evolution of San Francisco's Plastic-Bag Ban, Jennie Reilly Romer, Golden Gate University Environmental Law Journal, 1 Golden Gate Env't J L.J. 439 (2010); and The Most Popular Tax in Europe? Lessons From the Irish Plastic Bags Levy, F. Convey, S. McDonnell, S. Ferreira, Environ Resource Econ (2007) 38:1-11; and

~~WHEREAS, regulations that prohibit the use of single-use plastic carryout bags and require a pass-through charge on all carryout bags will include fees and measures that encourage shoppers to bring their own reusable carryout bags or utilize other environmentally-sound alternatives; reduce the cost of solid waste disposal by the City, and to conserve natural resources and protect the environment; and~~

WHEREAS, the City Council finds that it is in the best interest of the health, safety, and welfare of the citizens of the City to regulate carryout bags;

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

## Section 1.

### **Definitions.**

~~A. "Compostable" means that the product completely breaks down into a stable product due to the action of microorganisms in a controlled, aerobic commercial process that results in a material safe and desirable as a soil amendment meeting the compost quality standards found under WAC 173-350-220 (as currently enacted or later amended) for metals, physical-1 parameters, pathogens, manufactured inert material, and other testing parameters set by the local Health Department, has been found to degrade satisfactorily at the composting facility receiving~~

~~the material, meets standard specification ASTM D6400, and has been certified as compostable by the Biodegradable Products Institute or similar national or international certification authority.~~

~~BA.~~ “Carryout bag” means any bag that is provided by a retail establishment at the check stand, cash register, point of sale or other point of departure to a customer for use to transport or carry away purchases such as merchandise, goods or food from the retail establishment. Carryout bags do not include:

1. Bags used by consumers inside stores to package bulk items, such as fruit, vegetables, nuts, grains, candy, greeting cards or small hardware items such as nails, bolts or screws, contain or wrap frozen foods, meat or fish regardless of whether they are prepackaged, contain or wrap flowers, potted plants or other items where dampness may be a problem, contain unwrapped prepared foods or bakery goods, contain prescription drugs; or

2. A bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recyclable paper bag or reusable bag, such as prepared take-out foods or prepared liquids intended for consumption away from the retail establishment; or

3. Newspaper bags, door-hanger bags, tire bags, laundry-dry cleaning bags or bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste or yard waste.

4. Paper bags which are smaller than one-eighth (1/8) barrel size (smaller than 882 cubic inches).

~~CB.~~ “Reeyeled Recyclable paper carryout bag” means a paper carryout bag one-eighth (1/8) barrel size or larger (882 cubic inches or larger) provided by a store to a customer at the point-of-sale that ~~meets all of the following requirements:~~

~~1. Except as provided in subsection 2, the paper carryout bag contains~~ Contains an average of 40% postconsumer recycled materials;

~~2. An eight-pound or smaller recycled paper bag shall contain a minimum of 20% postconsumer recycled material;~~

~~2. 3. The paper carryout bag is~~ Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the City;

~~43. The paper carryout bag is~~ Is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Material (ASTM) Standard D6400, as published in Master Environmental Assessment on Single Use and Reusable Bags, March 2010; and

~~54.~~ Printed on the recyclable paper carryout bag is the minimum percentage of postconsumer content.

~~DC.~~ “Retail establishment” means any person, corporation, partnership, business, facility, vender, organization or individual that sells or provides merchandise, goods, or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a costumer: retail establishment includes, by way of example, and not limitation, any grocery store, department store, hardware store, pharmacy, liquor store, restaurant, catering truck, convenience store, and any other retail store or vendor, including temporary ones at farmers markets, street fairs, and festivals.



**ED.** "Reusable carryout bag" means a bag made of cloth or other material with handles that is specifically designed and manufactured for long term multiple reuse and meets all of the following requirements:

1. Has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capacity of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet,
2. Is machine washable or made from a material that can be cleaned or disinfected, and
3. If made of film plastic, in a minimum of at least 2.25 mils thick.

**FE.** "Single-use plastic carryout bag" means ~~any~~ carryout bag that is less than 2.25 mils thick and is made from plastic or any nonrenewable resource.

**GF.** "Pass-through charge" means a charge to be collected by retailers from their customers when providing plastic or ~~reeyeled-recyclable~~ paper carryout bags, and retained by retailers to offset the cost of bags and other costs related to the pass-through charge.

## **Section 2.**

### **Regulations.**

A. No retail establishment in the City shall provide a carryout bag to a customer unless otherwise permitted pursuant to this chapter.

B. No retail establishment shall distribute a carryout bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless otherwise permitted pursuant to this chapter.

C. Retail establishments in the City may, subject to this Ordinance, provide to a customer at the point-of-sale a reusable carryout bag or a reeyeled-recyclable paper carryout bag.

~~D. No retail establishment in the city shall provide a paper carryout bag with a manufacturer's stated capacity of one-eighth barrel (882 cubic inches) or larger that is not a reeyeled paper carryout bag.~~

**ED.** A retail establishment may make reusable carryout bags available to customers through sale.

~~F. No retail establishment in the City shall use or provide polyethylene or other non-compostable plastic film bags tinted green or brown for customers to bag products in stores, as carryout bags, or for home delivery.~~

~~G. Any film bags meeting the definition of compostable that retail establishments provide to customers for food or other products, such as vegetables bagged in stores prior to checkout, must be tinted green or brown and shall be clearly labeled "COMPOSTABLE," including language following the Federal Trade Commission's "Green Guides."~~

~~H. No film bag that retail establishments provide to customers to bag products in stores, as carryout bags, or for home delivery may be labeled with the term "biodegradable," "degradable,"~~

~~"decomposable," or any similar terms, or in any way imply that the product will break down, fragment, biodegrade, or decompose in a landfill or other environment.~~

~~IE.~~ Each retail establishment that provides a customer with a plastic reusable carryout bag or a recyclable carryout bag shall collect a pass-through charge of not less than \$0.05 for each ~~plastic or recyclable paper carryout~~ bag provided.

### **Section 3.**

#### **Exemptions.**

A. Notwithstanding the requirements contained in this Ordinance, a retailer may not collect a pass-through charge from anyone with a voucher or electronic benefits card issued under programs including, but not limited to, Women Infants and Children (WIC); Temporary Assistance to Needy Families (TANF); Federal Supplemental Nutrition Assistance Program (SNAP), also known as Basic Food; and the Washington State Food Assistance Program (FAP).

B. Food banks and other food assistance programs are exempt from the requirements for this chapter.

C. The Mayor or designee may exempt a retail establishment from the requirements of this chapter for up to a one-year period, upon a request by the retail establishment showing that the conditions of this chapter would cause undue hardship. An "undue hardship shall only be found in:

1. Circumstances or situations unique to the particular retail establishment, such that there are no reasonable alternatives to single-use plastic carryout bags or a pass-through charge cannot be collected; or

2. Circumstances or situations unique to the retail establishment, such that compliance with the requirements of this chapter would deprive a person of a legally protected right.

D. If a retail establishment requires an exemption beyond the initial exemption period, the retail establishment must reapply prior to the end of the exemption period and must demonstrate continued undue hardship if it wished to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

E. An exemption request shall include all information necessary for the City to make its decision, including, but not limited to, documentation showing the factual support for the claimed exemption. The Mayor or designee may require the applicant to provide additional information to permit the City to determine facts regarding the exemption request.

F. The Mayor or designee may approve the exemption request, in whole or in part, with or without conditions.

G. Exemption decisions are effective immediately. A party aggrieved by a final decision may appeal or seek review of the decision in accordance with applicable law. Unless another period of time applies under applicable law or court rule, an appeal of the decision must be filed within



21 calendar days from the date the final decision was served personally or placed in the United States mail, postage prepaid and properly addressed.

H. The City Council may, by resolution, establish a fee for exemption requests. The fee shall be sufficient to cover the costs of processing the exemption request.

#### **Section 4.**

##### **Violations.**

A. It shall be unlawful to violate or be in conflict with this ordinance. Each day, defined as the twenty-four-hour period beginning at 12:01 a.m., in which violation of this ordinance occurs, shall constitute a separate violation.

B. Any person, firm, business, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be subject to the provisions of chapter 1.20 EMC. In the event an appeal of an order issued pursuant to chapter 1.20 EMC is not subject to RCW 36.70C (the Land Use Petition Act), appeal shall be by writ of certiorari.

C. Upon a first violation of any part of this chapter, a notice of violation may issue to the offending person, firm, business, corporation, or association or any agent thereof. The notice of violation shall contain the date of and alleged type of violation. The notice of violation shall be regarded as a warning and no other sanctions shall be implemented. Notice shall be served upon the premises to the highest ranking employee currently on duty at the time of delivery.

D. If after the issuance of a notice of violation the offender commits subsequent noncompliance, the penalty for each offense shall be a maximum fine of \$250.00.

E. It shall be a violation of this chapter for any retail establishment to penalize, discipline, or discriminate against any employee for performing any duty necessary to comply with this chapter.

#### **Section 5. Effective Date**

This Ordinance shall become effective on September 30, 2019.

#### **Section 56. Severability**

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

#### **Section 67. General Duty**

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

**Section 78. Savings**

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

**Section 89. Corrections**

The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/ clerical errors, references, Ordinance numbering, section/ subsection numbers and any references thereto.

**Section 910. Codification**

Sections 1-~~5-6~~ of this Ordinance are to be codified in Title 8 (Health and Safety) of the Everett Municipal Code in a new chapter 8.21 entitled Reusable Bags.

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Cassie Franklin, Mayor

ATTEST:

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City Clerk

Passed:

Valid:



Published:

Effective Date:






**EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET**

PROJECT TITLE: An  
Ordinance Relating to  
Reusable Bags, Adding a New  
Chapter Entitled Reusable  
Bags to Title 8 EMC (Health  
and Safety).

    X     Briefing  
           Proposed Action  
           Consent  
           Action  
    X     First Reading  
           Second Reading  
           Third Reading  
           Public Hearing  
           Budget Advisory

COUNCIL BILL #  
Originating Department  
Contact Person  
Phone Number  
FOR AGENDA OF

03810-46  
Council  
F. Diaz  
425-257-7012  
                    

Initialed by:  
Department Head                       
Administration                       
Council President 

**Location**

**Preceding Action**

**Attachments**

Proposed Ordinance

**Department(s) Approval**

Council, Legal,  
Administration

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

The Everett City Council received requests to enact an ordinance promoting use of reusable shopping bags and reducing use of plastic shopping bags. At Council's direction, the proposed ordinance was drafted based on the "model ordinance" used by several other jurisdictions in Washington State.

**RECOMMENDATION** (Exact action requested of Council):

Adopt an Ordinance Relating to Reusable Bags, Adding a New Chapter Entitled Reusable Bags to Title 8 EMC (Health and Safety).

ORDINANCE No. \_\_\_\_\_



**AN ORDINANCE** Relating to Reusable Bags, Adding a New Chapter Entitled Reusable Bags to Title 8 EMC (Health and Safety)

**WHEREAS**, citizens have requested the City Council enact an Ordinance relating to disposable plastic waste, including plastic bags, out of concerns for the environment; and

**WHEREAS**, the City Council desires to conserve resources, reduce greenhouse gas emissions, waste, litter, and marine pollution, and to protect the public health and welfare, including wildlife, all of which increase the quality of life for the City's residents; and

**WHEREAS**, the State Legislature, in RCW 70.95.010(4), established waste reduction as a fundamental strategy of solid waste management, including changing purchasing practices to reduce the amount of waste that becomes a governmental responsibility; and

**WHEREAS**, the State Legislature, in RCW 70.95.010(6)(c), found that it is the responsibility of city governments "to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies;" and

**WHEREAS**, less reliance on single-use carryout bags contributes toward the goals of conserving energy and natural resources while reducing greenhouse gases and litter; and

**WHEREAS**, plastic bags are made of nonrenewable resources and never biodegrade; they photo-degrade and can take hundreds of years to break down into tiny toxic bits which can seep into the soil, waterways, lakes, and bays, posing a threat to animal life and the natural food chain; and

**WHEREAS**, the Ocean Conservancy cited plastic bags as within the most collected items in the ocean trash index for Washington State per the Building a Clean Swell 2018 Report; and

**WHEREAS** the Washington State Department of Ecology's 2010 "Beyond the Curb" study of commingled residential recyclables from the Southwest Region estimates that it takes \$700-\$1,000 per ton for recycling centers to remove plastic films from other recyclables; and

**WHEREAS**, the City finds that composting is threatened because of contamination by confusingly colored, marked and look-alike materials, including some non-compostable plastic film bags; and



**WHEREAS**, it is in the City's interest that contamination in local compost be reduced to ensure local compost is marketable and viable for use in local gardens, farms, landscaping, and surface water and transportation projects; and

**WHEREAS**, in order to reduce the use of single-use plastic and paper carryout bags in the City, it is necessary to regulate such use; and

**WHEREAS**, the City Council solicited feedback and comments from residents and businesses, and considered various studies, reports, articles, and other references, including, but not limited to: Seattle Bag Ban Update Memorandum, City of Seattle (2016); Discussion of Plastic Carryout Bag Regulation Alternatives, City of Shoreline (2013); Plastic Bag Staff Report, City of Kirkland (2013); Reducing Our Use: Plastic Shopping Bags, Thurston County (2012); Assessment of the Potential for Cross Contamination of Food Products by Reusable Shopping Bags, D. Williams, C. Gerba, S. Maxwell, R. Sinclair, Food Protection Trends V.31, No. 8 508-513 (2011); The Evolution of San Francisco's Plastic-Bag Ban, Jennie Reilly Romer, Golden Gate University Environmental Law Journal, 1 Golden Gate Env't J L.J. 439 (2010); and The Most Popular Tax in Europe? Lessons From the Irish Plastic Bags Levy, F. Convey, S. McDonnell, S. Ferreira, Environ Resource Econ (2007) 38:1-11; and

**WHEREAS**, regulations that prohibit the use of single-use plastic carryout bags and require a pass-through charge on all carryout bags will encourage shoppers to bring their own reusable carryout bags, reduce the cost of solid waste disposal by the City, and protect the environment; and

**WHEREAS**, the City Council finds that it is in the best interest of the health, safety, and welfare of the citizens of the City to regulate carryout bags;

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

### **Section 1.**

#### **Definitions.**

A. "Compostable" means that the product completely breaks down into a stable product due to the action of microorganisms in a controlled, aerobic commercial process that results in a material safe and desirable as a soil amendment meeting the compost quality standards found under WAC 173-350-220 (as currently enacted or later amended) for metals, physical 1 parameters, pathogens, manufactured inert material, and other testing parameters set by the local Health Department, has been found to degrade satisfactorily at the composting facility receiving the material, meets standard specification ASTM D6400, and has been certified as compostable by the Biodegradable Products Institute or similar national or international certification authority.

B. "Carryout bag" means any bag that is provided by a retail establishment at the check stand, cash register, point of sale or other point of departure to a customer for use to transport or carry away purchases such as merchandise, goods or food from the retail establishment. Carryout bags do not include:

1. Bags used by consumers inside stores to package bulk items, such as fruit, vegetables, nuts, grains, candy, greeting cards or small hardware items such as nails, bolts or screws, contain or wrap frozen foods, meat or fish regardless of whether they are prepackaged, contain or wrap flowers, potted plants or other items where dampness may be a problem, contain unwrapped prepared foods or bakery goods, contain prescription drugs; or

2. A bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recyclable paper bag or reusable bag, such as prepared take-out foods or prepared liquids intended for consumption away from the retail establishment; or

3. Newspaper bags, door-hanger bags, tire bags, laundry-dry cleaning bags or bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste or yard waste.

C. "Recycled paper carryout bag" means a paper carryout bag provided by a store to a customer at the point-of-sale that meets all of the following requirements:

1. Except as provided in subsection 2, the paper carryout bag contains an average of 40% postconsumer recycled materials;

2. An eight-pound or smaller recycled paper bag shall contain a minimum of 20% postconsumer recycled material;

3. The paper carryout bag is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the City;

4. The paper carryout bag is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Material (ASTM) Standard D6400, as published in Master Environmental Assessment on Single Use and Reusable Bags, March 2010; and

5. Printed on the paper carryout bag is the minimum percentage of postconsumer content.

D. "Retail establishment" means any person, corporation, partnership, business, facility, vender, organization or individual that sells or provides merchandise, goods, or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a customer: retail establishment includes, by way of example, and not limitation, any grocery store, department store, hardware store, pharmacy, liquor store, restaurant, catering truck, convenience store, and any other retail store or vendor, including temporary ones at farmers markets, street fairs, and festivals.

E. "Reusable carryout bag" means a bag made of cloth or other material with handles that is specifically designed and manufactured for long term multiple reuse and meets all of the following requirements:

1. Has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capacity of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet,

2. Is machine washable or made from a material that can be cleaned or disinfected, and

3. If made of film plastic, in a minimum of at least 2.25 mils thick.

F. "Single-use plastic carryout bag" means any bag that is less than 2.25 mils thick and is made from plastic or any nonrenewable resource.



G. "Pass-through charge" means a charge to be collected by retailers from their customers when providing plastic or recycled paper carryout bags, and retained by retailers to offset the cost of bags and other costs related to the pass-through charge.

## **Section 2.**

### **Regulations.**

A. No retail establishment in the City shall provide a carryout bag to a customer unless otherwise permitted pursuant to this chapter.

B. No retail establishment shall distribute a carryout bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless otherwise permitted pursuant to this chapter.

C. Retail establishments in the City may, subject to this Ordinance, provide to a customer at the point-of-sale a reusable carryout bag or a recycled paper carryout bag.

D. No retail establishment in the city shall provide a paper carryout bag with a manufacturer's stated capacity of one-eighth barrel (882 cubic inches) or larger that is not a recycled paper carryout bag.

E. A retail establishment may make reusable carryout bags available to customers through sale.

F. No retail establishment in the City shall use or provide polyethylene or other non-compostable plastic film bags tinted green or brown for customers to bag products in stores, as carryout bags, or for home delivery.

G. Any film bags meeting the definition of compostable that retail establishments provide to customers for food or other products, such as vegetables bagged in stores prior to checkout, must be tinted green or brown and shall be clearly labeled "COMPOSTABLE," including language following the Federal Trade Commission's "Green Guides."

H. No film bag that retail establishments provide to customers to bag products in stores, as carryout bags, or for home delivery may be labeled with the term "biodegradable," "degradable," "decomposable," or any similar terms, or in any way imply that the product will break down, fragment, biodegrade, or decompose in a landfill or other environment.

I. Each retail establishment that provides a customer with a plastic carryout bag or a recyclable carryout bag shall collect a pass-through charge of not less than \$0.05 for each plastic or recyclable paper carryout bag provided.

## **Section 3.**

### **Exemptions.**

A. Notwithstanding the requirements contained in this Ordinance, retailer may not collect a pass-through charge from anyone with a voucher or electronic benefits card issued under programs including, but not limited to, Women Infants and Children (WIC); Temporary Assistance to Needy Families (TANF); Federal Supplemental Nutrition Assistance Program (SNAP), also known as Basic Food; and the Washington State Food Assistance Program (FAP).

B. Food banks and other food assistance programs are exempt from the requirements for this chapter.

C. The Mayor or designee may exempt a retail establishment from the requirements of this chapter for up to a one-year period, upon a request by the retail establishment showing that the conditions of this chapter would cause undue hardship. An “undue hardship shall only be found in:

1. Circumstances or situations unique to the particular retail establishment, such that there are no reasonable alternatives to single-use plastic carryout bags or a pass-through charge cannot be collected; or

2. Circumstances or situations unique to the retail establishment, such that compliance with the requirements of this chapter would deprive a person of a legally protected right.

D. If a retail establishment requires an exemption beyond the initial exemption period, the retail establishment must reapply prior to the end of the exemption period and must demonstrate continued undue hardship if it wished to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

E. An exemption request shall include all information necessary for the City to make its decision, including, but not limited to, documentation showing the factual support for the claimed exemption. The Mayor or designee may require the applicant to provide additional information to permit the City to determine facts regarding the exemption request.

F. The Mayor or designee may approve the exemption request, in whole or in part, with or without conditions.

G. Exemption decisions are effective immediately. A party aggrieved by a final decision may appeal or seek review of the decision in accordance with applicable law. Unless another period of time applies under applicable law or court rule, an appeal of the decision must be filed within 21 calendar days from the date the final decision was served personally or placed in the United States mail, postage prepaid and properly addressed.

H. The City Council may, by resolution, establish a fee for exemption requests. The fee shall be sufficient to cover the costs of processing the exemption request.

#### **Section 4.**

#### **Violations.**

A. It shall be unlawful to violate or be in conflict with this ordinance. Each day, defined as the twenty-four-hour period beginning at 12:01 a.m., in which violation of this ordinance occurs, shall constitute a separate violation.

B. Any person, firm, business, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be subject to the provisions of chapter 1.20 EMC. In the event an appeal of an order issued pursuant to chapter 1.20 EMC is not subject to RCW 36.70C (the Land Use Petition Act), appeal shall be by writ of certiorari.

C. Upon a first violation of any part of this chapter, a notice of violation may issue to the offending person, firm, business, corporation, or association or any agent thereof. The notice of violation shall contain the date of and alleged type of violation. The notice of violation shall be regarded as a warning and no other sanctions shall be implemented. Notice shall be served upon the premises to the highest ranking employee currently on duty at the time of delivery.

D. If after the issuance of a notice of violation the offender commits subsequent noncompliance, the penalty for each offense shall be a maximum fine of \$250.00.

E. It shall be a violation of this chapter for any retail establishment to penalize, discipline, or discriminate against any employee for performing any duty necessary to comply with this chapter.

#### **Section 5. Severability**

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

#### **Section 6. General Duty**

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

#### **Section 7. Savings**

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.



**Section 8. Corrections**

The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/ clerical errors, references, Ordinance numbering, section/ subsection numbers and any references thereto.

**Section 9. Codification**

Sections 1-5 of this Ordinance are to be codified in Title 8 (Health and Safety) of the Everett Municipal Code in a new chapter 8.21 entitled Reusable Bags.

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Cassie Franklin, Mayor

ATTEST:

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City Clerk

Passed:

Valid:

Published:

Effective Date: